

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Application of: BAXENDALE et al	:
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Application No.: 10/527,767	:
	:
Filing Date: September 12, 2005	:
	:
For: CHICKEN ASTROVIRUS TYPE 2	:
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Group Art Unit: 1648  
Confirmation No.: 5168  
Examiner: Ali Reza Salimi  
Date: December 15, 2010

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT****Mail Stop: PETITIONS**

Commissioner of Patents

P.O. Box 1450

Alexandria, VA 22313

Sir/Madam:

Applicants request reconsideration of the patent term adjustment indicated in the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the Issue Notification dated October 13, 2010. Applicants have determined that the patent term adjustment should be 841 days, rather than the 610 days indicated.

The Commissioner is hereby authorized to debit the fee under 37 C.F.R. 1.18(e) to Deposit Account number 19-0365.

Applicants' determination is detailed in Appendix A, the AIPA Term Calculation Report, submitted herewith. The credits and debits with respect to the patent term adjustment are summarized as follows:

**Credits:**

3-Year PTO Issue of Patent (Wyeth et al. v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010)) [03/11/2005 to 11/02/2010]	966 days
4-month PTO Response to Appeal Brief [04/29/2009 to 09/17/2009]	19 days
4-month PTO Issue of Patent [04/21/2010 to 11/02/2010]	<u>73 days</u>
Total	1058 days

**Debits:**

3-month Applicant response to Notice or Action [08/08/2006 to 11/16/2006]	8 days
[12/26/2007 to 04/21/2008]	26 days
[08/06/2008 to 02/05/2009]	<u>91 days</u>
Total	125 days

**Overlap Days** 92 days

**Credits less Debits equal 841 days.**

Applicants respectfully request that the patent term adjustment be recalculated and the full term adjustment of 841 days be applied to the issued patent.

Applicants do not believe that any other fee is due in connection with this filing. If, however, Applicants do owe any such fee(s), the Commissioner is hereby authorized to charge the fee(s) to Deposit Account No.19-0365. In addition, if there is ever any other fee deficiency or overpayment under 37 C.F.R. §1.16 or 1.17 in connection with

this patent application, the Commissioner is hereby authorized to charge such deficiency or overpayment to Deposit Account No. 19-0365.

Respectfully submitted,

*William M. BLACKSTONE/*  
Registration No. 29,772

William M. Blackstone  
Registration No. 29,772

Dated: **December 15, 2010**  
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# **APPENDIX A**



## AIPLA Term Calculation Report

APPLICATION INFORMATION			
Docket Number:	1 2002/016 US	User Name:	Blackstone, William
Application Number:	10/527,767	Firm/Company Name:	Schering-Plough
Filing Date:	09/15/2003	User Comments:	
Title/Inventor(s):	CHICKEN ASTROVIRUS TYPE 2, William Bascardade, Cambridge, GBN (GB)	Calculation Generated:	12/06/2010 05:55:58 PM ET

AIPLA TERM CALCULATION SUMMARY	
Calculation Mode:	Preliminary (1)
Earliest Referenced Application under 35 USC § 120, 121, or 365(c):	09 / 18 / 2002
International Filing Date:	09 / 15 / 2003
Net Adjustment Credits:	966 Days
Net Adjustment Debits:	125 Days
Patent Term Adjustment:	841 Days
AIPLA Patent Term End Date:	01 / 06 / 2025 (2)

(1) Based on your current data for this application, a complete calculation could not be performed. Some rubric(s) in your application could not be analyzed because they are inconsistent with improper events or missing related events, or an election was made not to analyze the rule. For a list of such events and rule issues, see the Term Analysis tab.

(2) Assumed perfect maintenance fees, no intervening acts, and no 35 USC 156 regulatory extensions. Terminal discontinue(s) filed in this case, if any, may result in an earlier term end date. Without adjustment, the term would end on 09/18/2022.

Credit Days (USPTO Delay):	735	966	x
Debit Days (Applicant Delay):	125	125	Month
Total Patent Term Adjustment Days:	610	841	x

(3) Comparison is shown for Non-Overlapping USPTO Delays, Applicant Delays, and Total PTA Adjustments (PTA) tab on 12/06/2010. See the full PATR PTA tab, file wrapper (e.g., Notice of Allowance, PTA petitions), and issued patent for complete information on USPTO-calculated PTA.

03/11/2005 National Stage Commenced under 35 USC 371(b) or (3)	<b>3-Year PTO Issue of Patent</b>		
	<p>PTO must issue a patent within 3 years (not including exclusions) after the date on which the application was filed under 35 USC 111(a) or the national stage commenced under 35 USC 371(b) or (3) in an international application. Period of adjustment (credits) begins on the day after the date that is 3 years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 USC 371(b) or (3) in an international application and ending on the date a patent was issued, but not including the sum of the listed exclusionary periods. 35 USC 154(d)(1)(B); 37 CFR 1.702(b), 1.703(b).</p> <p>You are elected to analyze this rule in accordance with Wyeth v. Kappos, 591 F.3d 1164 (Fed. Cir. 2010).</p>	Issue Date: 11/02/2010 Issue Date	966
08/22/2005 Notice of DO/EO Missing Requirements	<b>3-Month Applicant Response to Notice or Action</b>		
	<p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply shall be reduced if notice has no effect on the deadline. 35 USC 154 (b)(2)(C)(i); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.708(c).</p>	Applicant Response: None assigned	Not Analyzed (1)

<p>C</p> <p>Application Fulfilled Requirements of 35 USC 371</p> <p>09/12/2005</p>	<p><b>14-Month PTO First Action</b></p> <p>PTO must mail a notification under 35 USC 132 or a notice of allowance under 35 USC 151 not later than 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371, in an international application. Period of adjustment (credits) begins on the day after the date that is 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 and ending on the date of mailing of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(i); 37 CFR 1.702(a)(1), 1.703(a)(1).</p>	<p><i>First PTO Action:</i></p> <p>08/08/2006</p> <p>Non-final Action</p>	<p>0</p>
<p>D</p> <p>Non-final Action</p> <p>08/08/2006</p>	<p><b>3-Month Applicant Response to Notice or Action</b></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any adjustment (credits) to the argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<p><i>Applicant Response:</i></p> <p>11/16/2006</p> <p>Reply after Non-final Action under 37 CFR 1.111</p>	<p>8</p>
<p>E</p> <p>Reply after Non-final Action under 37 CFR 1.111</p> <p>11/16/2006</p>	<p><b>4-Month PTO Response to Applicant Reply</b></p> <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(e) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2)(A3).</p>	<p><i>PTO Response:</i></p> <p>03/01/2007</p> <p>Non-final Action</p>	<p>0</p>
<p>F</p> <p>Non-final Action</p> <p>03/01/2007</p>	<p><b>3-Month Applicant Response to Notice or Action</b></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<p><i>Applicant Response:</i></p> <p>06/01/2007</p> <p>Reply after Non-final Action under 37 CFR 1.111</p>	<p>0</p>

<p>06/01/2007 Reply after Non-final Action under 37 CFR 1.111</p>	<p><b>4-Month PTO Response to Applicant Reply</b></p> <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the date after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(e) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2)(A)(3).</p>	<p><i>PTO Response:</i> 08/14/2007 Non-final Action</p>		0
<p>08/14/2007 Non-final Action</p>	<p><b>3-Month Applicant Response to Notice or Action</b></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply under 37 CFR 132 notice or action, including any rejection, objection, argument, or other request, beginning on the date the Office communication and ending on the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<p><i>Applicant Response:</i> 10/04/2007 Reply after Non-final Action under 37 CFR 1.111</p>	0	
<p>10/04/2007 Reply after Non-final Action under 37 CFR 1.111</p>	<p><b>4-Month PTO Response to Applicant Reply</b></p> <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the date after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(e) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2)(A)(3).</p>	<p><i>PTO Response:</i> 12/26/2007 Non-final Action</p>		0
<p>12/26/2007 Non-final Action</p>	<p><b>3-Month Applicant Response to Notice or Action</b></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(i); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<p><i>Applicant Response:</i> 04/21/2008 Reply after Non-final Action under 37 CFR 1.111</p>	26	



<p>04/21/2008 Reply after Non-final Action under 37 CFR 1.111</p>	<p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credit) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(i); 37 CFR 1.702(a)(2), 1.703(a)(2)(A)(i).</p>	<p>PTO Response: 08/06/2008 Final Rejection</p>	<p>0</p>
<p>08/06/2008 Final Rejection</p>	<p><b>2-Month Applicant Response to Notice or Action</b>  Period of adjustment (credit) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action meeting the criteria in 35 USC 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.</p>	<p>Applicant Response: 02/05/2009 Notice of Appeal to Board of Patent Appeal and Interferences</p>	<p>91</p>
<p>02/05/2009 Notice of Appeal to Board of Patent Appeal and Interferences</p>	<p><b>Exclusion for Appellate Review</b>  3-Year PTO Issue Requirement does not include the period of appellate review by the BPAI or a Federal court, beginning on the date on which a notice of appeal to the BPAI was filed under 35 USC 134 and 37 CFR 41.31 and ending on the date of the last decision by the BPAI or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145, or on the date of mailing of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. If the appeal did not result in a decision by the BPAI, 35 USC 154(b)(1)(B)(ii); 37 CFR 1.702(b)(6), 1.703(b)(4).</p>	<p>Responsive Event: None Assigned</p>	<p>Not Analyzed (1)</p>
<p>02/05/2009 Notice of Appeal to Board of Patent Appeal and Interferences</p>	<p><b>Credit for Successful Appellate Review</b>  Term of an original patent shall be adjusted (credits) for the period beginning on the date on which a notice of appeal to the BPAI was filed under 35 USC 134 and 37 CFR 41.31 and ending on the date of a final decision in favor of the applicant by the BPAI or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145, 35 USC 154(b)(1)(C)(iii); 37 CFR 1.702(e), 1.703(e).</p>	<p>Final Appellate Decision: None Assigned</p>	<p>Not Analyzed (1)</p>



- (4) Calculations of Debit, Credit, and Exclusion Days are determined by the rule assignments, assignments of related events, and analysis options in the Apply Term Rules tab. The patent professional using this system is responsible for reviewing and updating the Apply Term Rules tab to ensure all data is complete, correct, and consistent with their judgment and interpretation of applicable legal authority.
- (5) Exclusion Days are periods which are not included in determining the end of the 3-year period after the date on which the application was filed under 35 USC 111(a), or the national stage commenced under 35 USC 371(b) or (f) in an international application, used to determine credits under the 3-Year PTO Issue of Patent rule. See 35 USC 154(b)(1)(B)(i)-(iv), 37 CFR 1.702(b)(1)-(5), 1.703(b)(1)-(4).
- (6) Debit Days are days where grounds for reduction of period of adjustment of patent term exist. See, e.g., 37 CFR 1.704. Debit Days are sometimes referred to as Applicant Delay.
- (7) Credit Days are days where grounds for adjustment of patent term exist. See, e.g., 37 CFR 1.702, 1.703. Credit Days are sometimes referred to as USPTO Delay.
- (8) Debit and Credit Days may overlap other event periods, debit periods overlap other debit periods, or exclusion periods overlap other exclusion periods; overlaps are subtracted so that each calendar day is counted only once. Net Debit Days, but is not less than zero.
- (9) Patent Term Adjustment Days equals Net Credit Days minus Net Debit Days, but is not less than zero.